

Original

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 26 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

PP Docket No 93-21

Inquiry into Sports Programming)
Migration)

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

RECEIVED

MAR 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Daniel L. Brenner
Loretta P. Polk
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202)775-3664

Counsel for the National Cable
Television Association, Inc.

March 29, 1993

No. of Copies rec'd
List A B C D E

7 8

TABLE OF CONTENTS

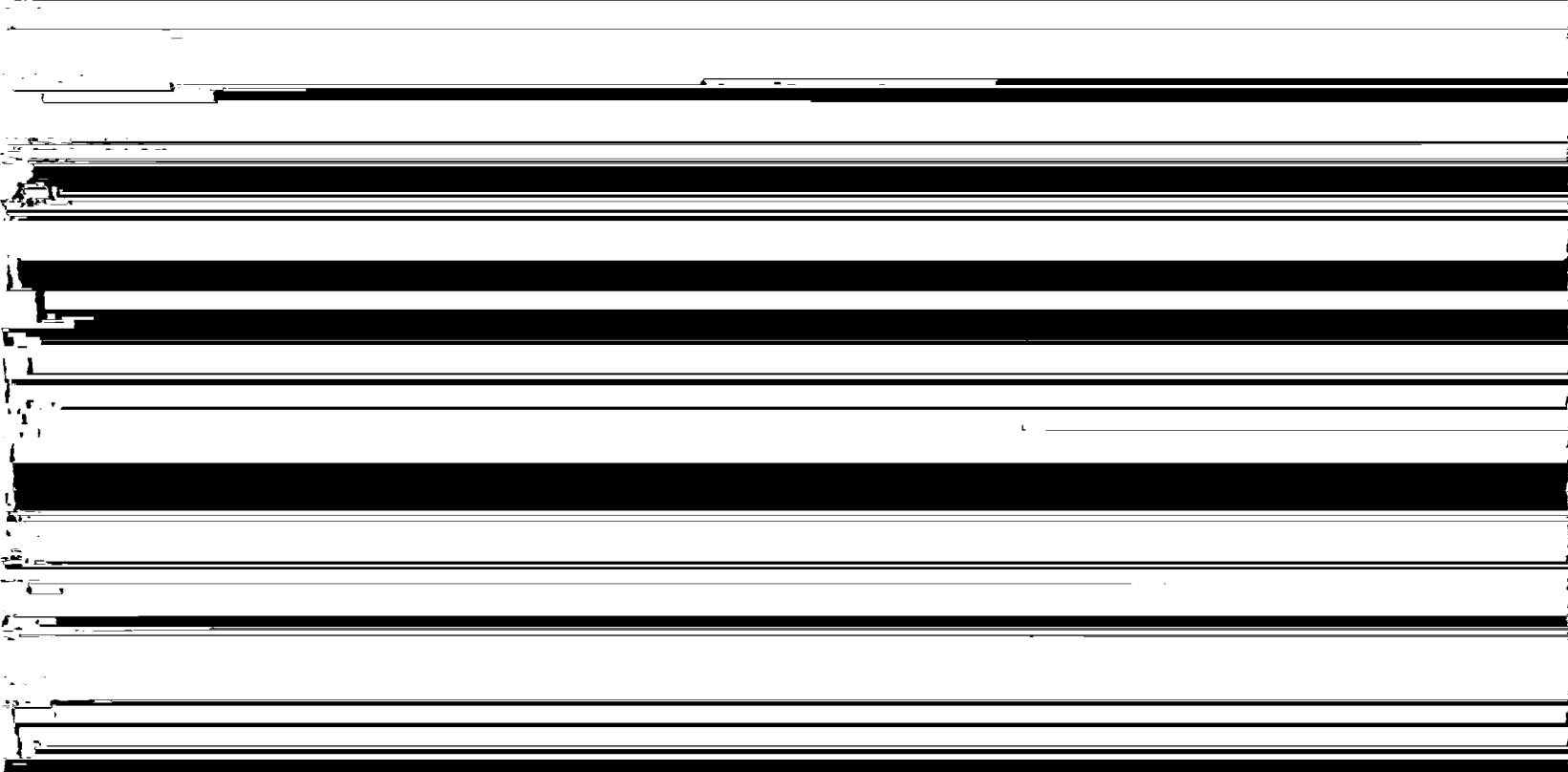
	<u>Page</u>
INTRODUCTION AND SUMMARY	1
DISCUSSION	3
I. CABLE TELEVISION HAS BENEFITTED THE PUBLIC BY PROVIDING AN EXPANDED ARRAY OF SPORTS PROGRAMMING OPTIONS FOR CONSUMERS	3
II. CABLE TELEVISION IS NOT SIPHONING PROGRAMMING FROM BROADCAST TELEVISION	8
III. BROADCAST COVERAGE OF SPORTS HAS INCREASED THROUGHOUT THE LAST DECADE	14
A. Major League Baseball	15
B. National Basketball Association	17
C. National Football League	19
D. Collegiate Sports	20
CONCLUSION	23

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Section 26 of the)	PP Docket No 93-21
Cable Television Consumer Protection)	
and Competition Act of 1992)	
)	
Inquiry into Sports Programming)	
Migration)	

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association Inc. ("NCTA"), by its attorneys, hereby submits its comments regarding the Commission's inquiry into sports programming migration. NCTA is the principal trade association of the cable television industry, representing the owners and operators of cable systems serving over 80 percent of the nation's 57 million cable households. NCTA's members also include cable programmers, cable equipment



step in with laws or regulations that may have the effect of impeding the delivery of a wide array of sports programming via every medium.

DISCUSSION

I. CABLE TELEVISION HAS BENEFITTED THE PUBLIC BY PROVIDING AN EXPANDED ARRAY OF SPORTS PROGRAMMING OPTIONS FOR CONSUMERS.

As Congress recognized, cable television has "increased the availability of sports programming, or resulted in telecasts of sports programming that previously were not available to sport viewers."^{1/} But while cable is lauded for bringing new and varied sports programming to consumers, Congress is concerned that in the process the industry may be taking something away from broadcast television.

It is true that cable's increased presence in the world of sports has created a few local controversies and fueled concerns that major sporting events are in danger of being siphoned from over-the-air television to cable. But the facts do not support these worries. Cable's provision of increased sports programming to its subscribers has not been at the expense of broadcast viewers. To the contrary, as sports programming on cable increased, sports programming on broadcast television has increased as well.

1/ H.R. Rep. No. 628, 102d Cong., 2d Sess. 125 (1992).

Less than ten years ago, the broadcast industry was the predominant, and virtually unchallenged, television medium. It now stands among a variety of competitors in a continually evolving video marketplace. An important part of this changing environment has been the advent of more viewing options from new cable networks, independent broadcast stations and even video cassettes. Indeed, the growth and development of satellite services and alternative multi-channel media have increased viewer demand for diversity. The new video marketplace is "making it possible, therefore, for viewers to signal their preferences far more precisely than before, and programmers are responding by producing more targeted programming to serve the increasingly segmented market."^{2/}

In light of this changing video landscape, the owners of sports franchises, like other television rights holders, are operating on a new playing field. Declining audience ratings on the national broadcast networks combined with escalating player salaries has pushed them toward seeking new ways to maximize their revenues. Some combination of broadcast cable and pay-per-view coverage is now the economic reality for sports programming. For reasons of technology, economics, and consumer preference, the era in which three broadcast networks totally dominated all televised sports programming is over.

2/ F. Setzer and J. Levy, "Broadcast Television in a Multichannel Marketplace", OPP Working Paper Series 26, (June 1991) at 172.

Nevertheless, this does not mean that broadcast programming is being siphoned by cable. Indeed, the overwhelming majority of cable's sports programming does not consist of events or games which have migrated from over-the-air television. Both national and regional sports networks offer coverage of sports and sporting events which have received minimal, if any, coverage by broadcast television or had their coverage abandoned by the broadcasters altogether. Thus, the American public is receiving first-ever coverage of some sports and regaining televised coverage of other sports.

For example, cable provides television exposure for certain college sporting events, such as track and field, baseball, women's basketball and men's football and basketball of smaller, lesser-known schools. Viewers also have been afforded access to National Hockey League games, long ignored by the broadcast networks. Although local broadcast stations do provide some local hockey coverage, national and regional cable coverage has provided consumers with a greater variety of teams and match-ups.

Boxing is a sport that once received regular primetime coverage by the broadcast networks but was virtually abandoned long before the birth of cable networks. In the mid-1970s, however, cable television brought regular coverage of boxing back to primetime, notably through HBO's carriage of championship bouts. In addition, USA Network has offered weekly boxing matches from around the country in its Tuesday night primetime schedule.

When Turner Broadcasting System initiated satellite distribution of superstation WTBS, it not only brought first-ever coverage to certain amateur sports competitions, it brought more of the most popular team sports, such as major league baseball

The popularity and demand for sports programming spawned the development of regional sports networks in the late 1980s. These networks serve viewers in limited geographic areas, providing increased coverage of sports and teams of regional interest. Now serving nearly one-half of all television households, regional sports networks have expanded viewers' access to professional, collegiate and high school sports, often providing first-time coverage of amateur teams in the home communities and local schools.^{3/} Like national cable networks, much of their programming is devoted to alternative sports such as soccer, boxing, hockey, auto racing and tennis.

For example, Prime Sports Network, a cable sports network serving the Rocky Mountain region, delivers football and basketball games of colleges in its local communities. It also carries games of the Denver Nuggets, the professional basketball

abundance of available sports rights has fostered the development of new services and new outlets for sports product.

II. CABLE TELEVISION IS NOT SIPHONING PROGRAMMING FROM BROADCAST TELEVISION.

As shown above, the cable industry's remarkable growth over the past fifteen years has contributed greatly to the quantity and quality of televised sports. But there is no indication that sports programming has deserted broadcast television for cable-only carriage, or that it will do so. Indeed, the facts show that broadcast television is still the dominant force in coverage of the major sporting events and that cable has not diminished the amount of sports programming on over-the-air television.

Still, the perception lingers that cable is siphoning sports programming from broadcast television. In its June 1991 report on "Broadcast Television in a Multichannel Marketplace", for example, the Office of Plans and Policy noted that the National Football League (NFL) packages on ESPN and TNT represented the "best examples" of the sports migration phenomenon.^{4/} In the Commission's follow-up inquiry on the changing video marketplace, the NFL filed comments refuting this statement:

no NFL games have "migrated" or been "siphoned" from broadcast to cable television. Instead, the League's contracts with the cable networks have

4/ F. Setzer and J. Levy, "Broadcast Television in a Multichannel Marketplace", OPP Working Paper Series 26, June 1991.

brought additional games to fans across the country and are therefore a supplement to what is available on broadcast television.^{5/}

Thus, as the NFL explains, "a fan in Washington will have 90 or more games available on broadcast television during the current season, and will also have available an additional national game on a cable network each week. Absent the cable contracts, those national games would have been regional games, televised on Sunday afternoon, and unavailable to most of the country."^{6/} Far from taking games away, the cable contracts have offered viewers more options.

Furthermore, the NFL's policies regarding the number of games televised in a market on Sunday afternoon have remained unchanged since 1970. As the NFL explained, the circumstances that led to the development of cable football packages had nothing to do with "siphoning" or "migration":

Instead, the bulk of the games that made up the NFL's initial cable package (with ESPN in 1987-89) were games that the broadcast networks, for a variety of reasons were unwilling^{7/} to continue to purchase at any reasonable price.

Noting that the broadcast networks were not outbid by cable, the NFL cited the decline in ratings for prime time special games as a contributing factor in the broadcast networks' decision. In

5/ Comments of the National Football League, In the Matter of Review of the Policy Implications of the Changing Video Marketplace, MM Docket No. 91-221, November 21, 1991, at 2.

6/ Id.

7/ Id. at 4.

the face of this, the League turned to cable as an additional outlet for its special package. According to the NFL, cable secured the Sunday night games because the broadcast network which originally televised them was no longer interested in doing so, and the other two major broadcast networks had Sunday NFL packages. This situation represented more of an "eviction" by the broadcast networks, not a siphoning by cable.^{8/}

Similarly, Major League Baseball told the Commission that "there is simply no basis for the claim that ESPN and other cable programmers have been 'siphoning' Major League Baseball telecasts from free over-the-air television. The ESPN and other cable contracts have served as a supplement to, rather than a substitute for, local club telecasts. They have brought to millions of fans many Baseball games that otherwise would not have been televised at all."^{9/} The league went on to say that any reduction in network telecasts does not reflect migration of baseball to cable but, rather, "it is a response to steadily declining national ratings and the result of a competitive bidding process in which only one network expressed any desire to telecast a Baseball game each weekend."^{10/}

8/ Id. at 5.

9/ Reply Comments of Major League Baseball, In the Matter of Review of the Policy Implications of the Changing Video Marketplace, MM Docket No. 91-221, December 9, 1991 at 3.

10/ Id. at 3-4. See e.g. Broadcasting, February 24, 1992, at 4, 24-26. (Interview with then-Major League Baseball Commissioner Fay Vincent.

Furthermore, the reduced number of exclusively national broadcast network telecasts has permitted the telecast of an increased number of games by local stations, which are often able to garner higher ratings with games of high local appeal.^{11/}

Beyond professional football and baseball, the Olympics present a potent example of the rhetoric surrounding cable's foray into sports programming that was previously the exclusive domain of the three broadcast networks. Indeed, the Triplecast pay-per-view package for the '92 Summer Games raised unfounded fears that the public would lose access to events that they had always seen for free. As explained by NBC President Robert Wright, however, "the Triplecast was designed to help financially support NBC's free broadcast coverage of the Olympics."^{12/} NBC offered 161 hours of the traditional Olympic coverage "with no compromises and all the trimmings." He went on to say,

as an alternative for sports enthusiasts, NBC and Cablevision, Inc. jointly offered the pay-per-view Olympics Triplecast -- a commercial free, comprehensive programming package airing simultaneously on three cable channels through the Olympic's 15 days.

Nothing was taken away from the American viewers. To the contrary, audiences now have unprecedented choice and freedom.^{13/}

11/ See Reply Comments of Major League Baseball, In the Matter of Review of the Policy Implications of the Changing Video Marketplace, MM Docket No. 91-221, December 19, 1991 at 2-6.

12/ "Olympic TV Frenzy," USA Today, July 24, 1992, p. 8A.

13/ Id.

Although the Barcelona Games provided the first experiment

cable's involvement offered not only more coverage of the most popular events but more coverage of a broader range of sports. Sports enthusiasts of all kinds had access to competition appealing to their particular interests, as well as early rounds of various sports and continuous coverage of individual events.

With or without the public benefits of more comprehensive Olympic coverage, the economics of televising a sporting event of the magnitude and scope of the Olympics may require more joint broadcast/cable ventures. In fact, ABC and Turner recently confirmed that they are preparing for a joint bid on the rights to the 1996 Summer Olympics in Atlanta.^{17/} In an effort to spread the costs, four networks may be involved -- ABC, ESPN, TNT and WTBS. Similarly, the International Olympic Committee is looking ahead to a consortium of the broadcast networks, cable, DBS and possibly pay-per-view distribution for the 1998 Winter Games in Nagano, Japan.^{18/}

While joint ventures may become more commonplace in the future, there is no evidence that the cable industry is looking to take away the "big ticket" sporting events that are now offered over-the-air to the general public. Indeed, some cable executives have indicated that they would prefer that this not

17/ Broadcasting, February 22, 1993, p. 6.

18/ Paul Kagan Associates, Media Sports Business, January 1993, p. 6.

occur.^{19/} But cable operators are not the rights holders and do not dictate how and where sports programming is distributed in the marketplace.

III. BROADCAST COVERAGE OF SPORTS HAS STEADILY INCREASED THROUGHOUT THE LAST DECADE.

As cable networks have emerged as significant players in the sports programming arena, broadcast coverage of sports programming has concurrently experienced considerable growth. Since 1984, the three networks combined have experienced steady overall growth in total number of hours devoted to sports programming (See Chart 1). In non-Olympic years, broadcast network coverage has gone from 1,454 hours in 1985, to 1,559 hours in 1987, representing a seven percent increase. In 1989, broadcast coverage dipped slightly, to 1,555 hours, raising again to 1,597 in 1991. Thus, even with increased cable coverage and tough economic times, the presentation of sports on the broadcast

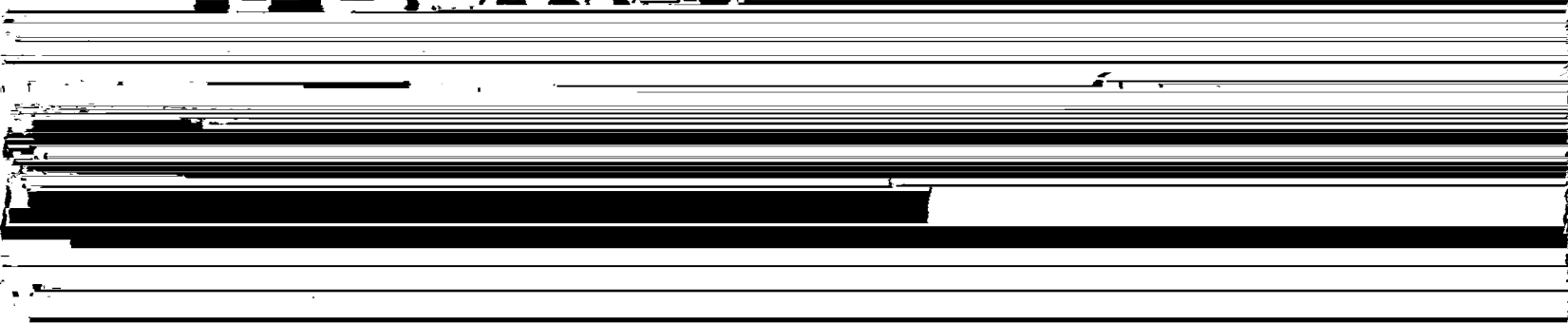
19/ In Philadelphia, for example, Comcast Corporation actively opposed a professional team's plan to air its games exclusively on cable. When the Philadelphia 76ers basketball team announced its intent to sell its games to a regional sports network, Comcast President Brian Roberts publicly expressed his concern that residents who do not subscribe to cable would be deprived of the games. Wall Street Journal, May 1, 1991. See also Testimony of Amos B. Hostetter, Jr., Chairman and CEO, ContinentalCablevision, Inc., before House Subcommittee on Telecommunications and Finance, June 27, 1991 (noting that many in the cable industry are on record with their uncomfortableness with so-called migration of sports); Broadcasting, February 23, 1993 (quoting Seth Abraham, President, Time Warner Sports on broadcast network involvement in major sporting events "because they belong on free TV").

networks has not suffered. And, as demonstrated below, sports programming has generally experienced significant growth throughout the broadcast industry.

A. Major League Baseball

The majority of Major League Baseball ("MLB") games continue to appear on local broadcast stations. In 1993, 1,780 regular season games are to be telecast on local stations, compared to 1,265 games on regional cable sports networks around the country. (See Chart 2). In fact, even as regional cable sports networks have become more popular, local broadcast coverage has continued to increase over the last five years. Rather than seeing a decline in the number of baseball games on over-the-air television, local broadcast stations have experienced a steady increase in the number of MLB games aired by them. In the last five years, local broadcast coverage has increased by 11.5 percent, from 1,597 games in 1987 to 1,780 games in 1993. (Chart 2).

Moreover, to the extent regional cable networks have obtained local rights to baseball games, they have not competed with broadcasters for the same product. In an effort to protect stadium ticket sales, the MLB franchises have limited the exposure of "home" contests by typically offering only "away" games to local broadcast stations. On the other hand, baseball teams have sold the rights to home games to regional cable sports



regional cable networks are games which would, in any event, typically be unavailable to local broadcasters. Therefore, local broadcasters are not losing games to regional cable sports networks.

With regard to national coverage of Major League Baseball, the broadcast networks dominated the field until ESPN obtained the rights to telecast additional games in 1990.^{20/} CBS and ESPN are entering their fourth and final season of a four-year rights deal. As part of its \$1.06 billion four-year contract, CBS aired 16 regular season games and held the exclusive rights to the entire post-season schedule, including both the American and National League Championship series and the World Series. ESPN obtained the rights in its \$400 million package to 156 regular season games and spring training. ESPN's entry into baseball coverage has benefitted consumers by bringing more games at more times to national television and by offering coverage to teams and parks which might not otherwise receive wide national exposure.^{21/}

20/ In the early 1980s, Major League Baseball briefly experimented with national cable coverage by selling a package of Thursday night games to USA Network.

21/ As reported recently, both broadcast network executives and MLB executives predict a drop of 30 percent or more in broadcast rights fees when the current broadcast/cable agreements expire in 1993. In response to lower than expected ratings, eroding viewer base and player salary

B. National Basketball Association

Regional cable sports networks have seen the most dramatic growth in coverage of the National Basketball Association ("NBA") regular season games. In the '92-'93 season, local broadcast stations will telecast 705 NBA games, while regional cable networks are slated to carry 937 games. (See Chart 3). Still, although cable coverage has steadily grown, broadcast station coverage has also grown over the last five years, with an overall 22 percent increase between the '87-'88 season and the current '92-'93 season. (See Chart 3).

Moreover, growth in cable coverage has not meant that games have been taken away from broadcast stations. Indeed, broadcast stations and regional networks typically draw from two separate pools of games. As with Major League Baseball, the majority of NBA games made available to cable are home games, which are not

that would not ordinarily be televised in the local market.

Another interesting phenomenon is that many professional basketball teams are producing their own games (and selling advertising), rather than simply selling the production and advertising rights to local broadcast stations and cable networks. In fact, according to a recent survey, all but five of the 27 NBA teams are directly involved in production and sales on at least one medium -- broadcast, cable or radio.^{23/} This trend is expected to continue, as basketball teams retain all rights and produce their own broadcast and cable shows.

The NBA's national broadcast and cable rights are held by NBC and Turner Broadcasting System, which are now in the third year of a four-year deal. NBC has the rights to broadcast between 17 and 26 regular-season games, the All-Star game, between 17 and 23 playoff games and the final best-of-seven championship series.^{24/} Thus, NBC has the option to increase coverage of both regular and postseason coverage by adding up to six additional games in the '92-'93 and '93-'94 seasons. In addition, NBC's rights package provides the opportunity to carry more broadcast coverage of conference championship series games, some of which were previously carried nationally on cable television. Turner's package gives it the rights to up to 50

23/ Broadcasting, "NBA's Do-It-Yourself TV-Radio Playbook", Special Report, October 5, 1992, pp. 47, 50-51.

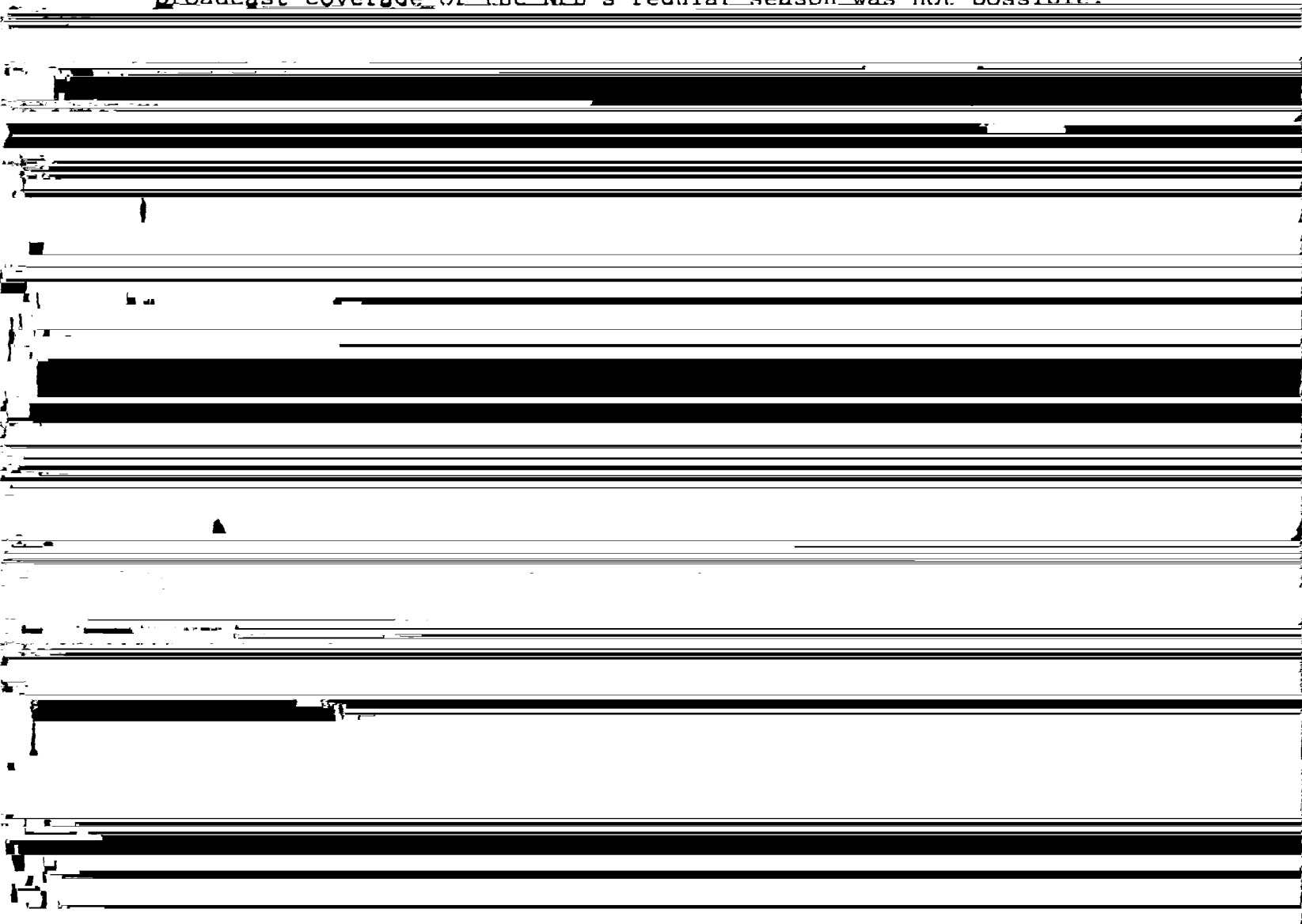
24/ Id.

pre-season and regular season games and up to 26 playoff games through the third round.^{25/}

C. National Football League

As discussed previously, ESPN's and TNT's NFL Sunday night packages brought football games to a national audience that would otherwise have been unable to see them. And they did so without reducing the number of games available to broadcast viewers on Sunday afternoons.

Furthermore, before the ESPN-NFL pact, local independent broadcast coverage of the NFL's regular season was not possible.



preseason and regular season games nationally and the Pro Bowl. It also offers local broadcast stations the opportunity to bid on the ancillary rights in the competing teams' home markets. As noted earlier, even with the cable package, the three broadcast networks still provide the overwhelming majority of the regular season games (both nationally and regionally), all of the playoff games, and the Super Bowl. And ABC has maintained its traditional coverage of Monday night football games during the regular season.

D. Collegiate Sports

Cable television has long provided an important outlet for coverage of collegiate sporting events. ESPN, for example, built its reputation as a sports network by providing coverage of college conferences, schools and games which had not previously received national or even regional television exposure. Moreover, Black Entertainment Television (BET) has furnished coverage of the games of black universities and colleges that would not otherwise be available on broadcast television. And regional sports networks, like local broadcast stations, give local fans access to sporting events sponsored by lesser-known schools of local interest.

College football provides a useful example of the trends in broadcast and cable coverage of collegiate sports. In the mid-1980s, television coverage of college football experienced a period of turmoil when the United States Supreme Court ruled that the NCAA could no longer negotiate network television rights on

behalf of its member schools.^{27/} As individual schools began to negotiate their own rights contracts, sports syndicators and local broadcasters were initially flooded with available games. It soon became apparent, however, that the large number of games on television was reducing both stadium ticket sales and television ratings. Subsequently, the number of nationally televised football games dropped from about 190 in 1984 to 100 in both 1986 and 1987.^{28/}

Since 1987, however, national broadcast and cable television coverage of collegiate football has increased steadily. Between 1987 and 1992, broadcast network coverage has increased by 148 percent, from 27 nationally televised games in 1987 to 67 nationally televised games in 1992. Meanwhile, cable sports networks (national, regional and superstations) have dramatically increased their coverage of college games from 54 in 1987 to 192 in 1992. (See Chart 4). Indeed, overall college football coverage has grown 234 percent in five years, with smaller

27/ NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984). Up until this decision, the NCAA authorized television exposure for only a limited number of schools. The University of Oklahoma challenged this practice as an unreasonable restraint of trade, which result in the court's decision to free many smaller colleges and universities to sell television rights to local broadcast stations and regional cable sports networks in their communities. Broadcasting, July 2, 1984, pp. 33-34.

28/ Broadcasting, August 4, 1986, p. 56; Broadcasting, August 3, 1987, p. 40.

schools getting more exposure than ever before.^{29/}

While national and regional cable networks now offer coverage of a wide variety of both small and large colleges, the broadcast networks still dominate the major collegiate conferences. And they still maintain the "first pick" of nationally televised games and retain the rights to the major Bowl games. ABC's college package includes both the College Football Association and the Big 10 and Pac 10.^{30/} ESPN also holds rights to some regular season, bowl and All-Star football games. Regional sports networks, Prime Ticket and SportsChannel America, provided additional coverage of a various of regional contests in the '92 season.

As with college football, the three broadcast networks maintain the "first pick" of basketball teams from the major college conferences and the rights to the conference championship games and the NCAA national tournament. In fact, in 1989, CBS entered into a seven-year deal with the NCAA which gives the network exclusive coverage of the NCAA men's basketball championship. The contract provides CBS with the exclusive rights even to all first-round tournament games play, which had been partially carried by ESPN since 1979. Indeed, ESPN's coverage of the NCAA tournament may well have created the viewer

29/ Paul Kagan Associates, Inc. Media Sports Business, January 1993, p. 7.

30/ "The Billion Dollar Season", Special Report, Broadcasting, August 10, 1992, pp. 39-41.

interest that ultimately resulted in the "siphoning" of the rights away from a cable network to a broadcast network.

CONCLUSION

As the foregoing demonstrates, sports fans across America now have a record number of sports programming hours at their disposal. And with interactivity, viewer-controlled replays and camera angles, and other technological enhancements on the horizon, there seems to be no end to improving the delivery of sports to the home.

While broadcast television is no longer the sole provider of sports programming, it is still providing the public with more sports than ever before. And consumers are in no danger at this time of losing access to the major sporting events they have come to expect from over-the-air television. Therefore, the Commission need not, and should not, recommend any legislative or regulatory action at this time.

Respectfully submitted,

NATIONAL CABLE TELEVISION
ASSOCIATION, INC.

By 
Daniel L. Brenner

By 
Loretta P. Polk

ITS ATTORNEYS
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202)775-3664

March 29, 1993